



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 12, 1990

Mr. Roger B. Borgelt
General Counsel
Texas Structural Pest Control Board
9101 Burnet Road, Suite 201
Austin, Texas 78758

OR90-538

Dear Mr. Borgelt:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9854.

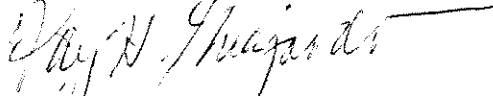
The Structural Pest Control Board (the board) received an open records request for documents pertaining to the requestor's complaint to the board concerning pest control services she received at her home. You have demonstrated that the board is currently a defendant in litigation brought by the requestor and contend that the board may withhold the requested information pursuant to section 3(a)(3) of the Open Records Act.

In your letter you state that "[i]t is entirely possible that some of [the requested] documents are already in [the requestor's] possession." Once information has been obtained by the opposing party in litigation, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the requestor has seen or had access to any of the documents at issue, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3). For similar reasons, the board may not withhold tape recordings of any publicly held meetings. Open Records Decision No. 221 (1979). You may, however, withhold any other records coming within the ambit of the request pursuant to section 3(a)(3) until such information is released during the discovery phase of the litigation or until the litigation is concluded.

Because case law and prior published open records decisions resolve your request, we are resolving this matter

with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-538.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/le

Ref.: ID# 9854
ID# 9865

cc: Elizabeth Iglesias
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